

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:09-CR-00201-F-1

No. 5:13-CV-00670-F

DEXTER BROADNAX,	)	
Petitioner,	)	
	)	
v.	)	<u>ORDER</u>
	)	
UNITED STATES OF AMERICA,	)	
Respondent.	)	

This matter is before the court on Dexter Broadnax's Motion for Reconsideration and Issuance of Certificate of Appealability [DE-200]. In his motion, Broadnax requests that the court reconsider the decision to deny him a certificate of appealability on the basis that he has made a substantial showing of the denial of a constitutional right, pursuant to 28 U.S.C.

§ 2253(c)(2), as to the following issues:

- (1) Is the constructive denial of counsel a violation of the Sixth Amendment?
- (2) The Supreme Court decision in *Alleyne v. United States*, 133 S. Ct. 2151 (2013) overruled *Harris v. United States*, 536 U.S. 545 (2002).
- (3) Counsel was ineffective for failing to subject the prosecution's case to a meaningful adversarial testing.
- (4) Counsel was ineffective for not understanding his only viable defense and for failure to interview witnesses and submit a proposed jury instruction.
- (5) Counsel failed to give notice of an alibi defense.
- (6) Counsel failed to request a continuance to secure witnesses and other requested material for the Government in light of their motion.

(7) Counsel failed to offer the lesser included offense of accomplice.

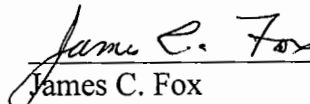
(8) Whether the sentencing enhancements for obstruction of justice and a firearm were properly applied following the Supreme Court's decision in *Alleyne*?

A certificate of appealability will not issue unless there has been "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). However, when a court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

The court finds that Broadnax has not made a substantial showing of the denial of a constitutional right. For this reason, Broadnax's Motion for Reconsideration and Issuance of Certificate of Appealability [DE-200] is DENIED.

SO ORDERED.

This the 15<sup>th</sup> day of April, 2016.

  
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James C. Fox  
Senior United States District Judge